

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
VARIANCE AND SUBSTANTIAL
DEVELOPMENT PERMIT DENIED BY
THE CITY OF SEATTLE TO LATITUDE
47° RESTAURANT,

JOHN LIMANTZAKIS dba LATITUDE
47° RESTAURANT,

Appellant,

v.

CITY OF SEATTLE,

Respondent.

SHB No. 78-10

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, an appeal from the denial of a substantial development
permit and variance by the City of Seattle, came before the Shorelines
Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Rod Kerslake,
Gerald D. Probst, and David Akana (presiding), at a hearing on
July 25, 1978 in Seattle.

Appellant was represented by his attorneys, Richard U. Chapi.
and John T. Rassier; respondent was represented by Ellen F. Peterson,

1 Assistant City Attorney.

2 Respondent City brought a motion for summary judgment at the outset
3 of the hearing. Appellant made a motion for summary judgment during the
4 proceeding. Each motion was taken under advisement by the Board and
5 the substance of each motion and ruling thereon are addressed in the
6 text of this decision.

7 Witnesses were sworn and testified; exhibits were admitted.

8 Having heard the testimony, having examined the exhibits and having
9 considered the contentions of the parties, the Shorelines Hearings Board
10 makes these

11 FINDINGS OF FACT

12 I

13 Appellant operates the Latitude 47⁰, which is a restaurant located
14 at 1232 Westlake Avenue North in Seattle. The restaurant is on the
15 west side of Lake Union in the Urban Stable/Lake Union (US/LU) shoreline
16 environment. This is not a shoreline of statewide significance. The
17 existing structure is constructed on pilings over water. The site is
18 on the south side of Waterway 2 on Lake Union. The site has 100 feet of
19 frontage and extends from the property line on shore a distance of 307'-6'
20 to the pierhead line. The west 85 feet is occupied by the existing
21 restaurant. The remaining property to the east is occupied by boat
22 moorage. To the south of the subject property is a covered boat
23 moorage and the AGC building. To the north across Waterway 2 is a
24 covered boat moorage. Across Westlake Avenue North there are commercial
25 and industrial buildings. The restaurant is located in a manufacturing
26 zone and the site is designated for commercial uses in the comprehensi

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1 plan. Parking is provided in a private lot across Westlake Avenue. Patron
2 also have their cars parked on the Westlake Avenue right of way when
3 space is available.

4 II

5 The instant property has reached its present configuration as the
6 result of three shoreline substantial development permits, the first of
7 which was issued in March of 1973 and the last of which was issued April
8 21, 1976, prior to the adoption and approval of the City's shoreline master
9 program. The restaurant is an attractive structure with tasteful decor
10 and can accommodate a maximum of 480 occupants.

11 A part of the structure is an open deck located on the north
12 portion of the restaurant with seating capacity for 36 persons.
13 Adjacent to this deck is an enclosed bar area. Because the use of
14 the open deck is subject to the vagaries of Seattle weather,
15 appellant used it for less than thirty days in 1977. The uncertainty
16 of use also affects the scheduling of employees. In order to more
17 adequately use the deck and to provide more view of Lake Union,
18 appellant applied for a shoreline substantial development permit and
19 variance to enclose the deck. The proposed development is a glass-roofed
20 enclosure over an existing deck area to allow its use for dining in all
21 weather conditions. The deck area to be enclosed is approximately
22 64' by 14'. The greenhouse-type enclosure would extend about 20 feet
23 above the existing deck, or about 33 feet above the ordinary high water
24 line on Lake Union. The enclosure will not increase the building's
25 occupancy but would provide the dining public with a beautiful
26 view of the lake. Additionally, the glass structure would not block

1 any significant view of the water from the shoreline.

2 III

3 The existing use is a restaurant constructed over water which is
4 not in conformance with Section 21A.75 of the Seattle Shoreline Master
5 Program (hereinafter SSMP):

6 Restaurants shall be permitted only when a traffic
7 generation study and a parking plan consistent with
8 the requirements of this Article are provided. While
9 restaurants are not dependent upon a shoreline location,
10 waterfront restaurants do provide members of the public
11 with an opportunity to view and at times gain access
12 to the water. Except as otherwise provided in this
13 Article, restaurants in the Shoreline District shall
14 provide regulated public access and shall not be
15 constructed over water.

16 As a nonconforming use, Section 21A.17 of the SSMP makes applicable
17 Section 5.34(a) of the Seattle Zoning Ordinance:

18 . . . any nonconforming building or part may be
19 maintained with ordinary repair provided, however,
20 no such building or part shall be extended, expanded
21 or structurally altered, except as otherwise required
22 by law, nor shall a nonconforming use be extended or
23 expanded, provided further, that nothing in this
24 Ordinance shall prevent the restoration of a
25 nonconforming building destroyed by fire or other
26 act of God. (Emphasis added.)¹

27 1. Nonconforming use is "a lawful use of land or structure in
existence on the effective date of this title or at the time of any
amendments thereto and which does not conform to the use regulations
of the zone in which such use is located." Section 26.06.230 of the
Seattle Code.

23 Structural alterations are "any change in the supporting members
24 of a building, such as foundations, bearing walls or partitions,
25 columns, beams or girders, or any structural change in the roof."
26 Section 26.06.200 of the Seattle Code.

27 The Seattle Shoreline Master Program, designated Article 21A,
was incorporated as a part of the Seattle Zoning Ordinance, both of whi
are noticed.

1 IV

2 The SSMP also requires a 35% view corridor on the lot (See Section
3 21A.35 and Table 2). The restaurant is not in conformance with this
4 provision. However, the proposed modifications do not add to present
5 view blockage.

6 V

7 In order to construct the proposed development, appellant sought
8 a variance from the above provisions of the SSMP.

9 VI

10 Section 21A.61² of the SSMP adopts a rule for variances which is
11

12 2. Section 21A.61 Shoreline Variances.

13 In specific cases the Director with approval of the Department
14 of Ecology may authorize variances from specific requirements of this
15 Article when there are practical difficulties or unnecessary hardships
16 in the way of carrying out the strict letter of the shoreline master
17 program. A shoreline variance will be granted only after the applicant
18 can demonstrate the following:

- 19 (a) That if he complies with the provisions of the
20 master program, he cannot make any reasonable use
21 of this property. The fact that he might make a
22 greater profit by using his property in a manner
23 contrary to the intent of the program is not a
24 sufficient reason for a variance.
25 (b) That the hardship results from the application
26 of the requirements of the Act and shoreline master
27 programs, and not, for example, from deed
restrictions or the applicant's own actions.
(c) That the variance granted will be in harmony with
the general purpose and intent of the shoreline
master program.
(d) That the public welfare and interest will be
preserved.

28 In authorizing a shoreline variance, the Director may attach
29 thereto such conditions regarding the location, character or other
30 features of a proposed structure or use as may be deemed necessary
31 to carry out the spirit and purpose of this Article and in the public
32 interest.

1 similar to that of the state rule, WAC 173-14-150.

2 VII

3 The City denied appellant's application for a variance when it
4 appeared that he had a reasonable use of his property and that a denial
5 of the application was not shown to constitute a hardship in making
6 reasonable use of the property. Appeal of the decision was made to this
7 Board.

8 VIII

9 Appellant now operates an attractive restaurant and offers indoor
10 and outdoor dining. Such operation of the restaurant allows him a
11 reasonable use of his total property. The proposed development would
12 allow him a better use of the existing deck area.

13 IX

14 Any Conclusion of Law which should be deemed a Finding of Fact
15 is hereby adopted as such.

16 From these Findings the Board comes to these

17 CONCLUSIONS OF LAW

18 I

19 The City of Seattle and State Department of Ecology have adopted
20 a rule for variances which requires a property owner to carry a heavy
21 threshold burden of proving that without a variance he cannot make any
22 reasonable use of his property. Section 21A.61(a) of the SSMP. If he
23 cannot do so, the application must fail. If he can do so, he must
24 also prove that the variance meets the remainder of the requirements of
25 Section 21A.61(b-d) of the SSMP, which was not decided by respondent in
26 the instant matter.

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II

Appellant is not constructing a new restaurant over water, but rather, is altering an existing over-water restaurant. Therefore he does not need a variance from Section 21A.75.

III

The proposed development does not violate the view corridor provisions of Section 21A.35 and Table 2 of the SSMP and hence, does not require a variance from the regulation.

IV

The proposed development is a legal non-conforming use, and as such, the structure may not be extended, expanded or structurally altered. Section 21A.17 of the SSMP. Appellant has failed to prove that if he complies with the above provision of the master program, that is, to continue to use an open deck rather than an enclosed deck, he cannot make any reasonable use of his entire property. We must therefore affirm the action of the City in denying the variance application.

While this Board is of the opinion that the proposed development is consistent with the provisions of the Shoreline Management Act and finds the proposed alterations very attractive, we cannot ignore the plain requirement of Section 21A.17 of the SSMP and the difficult burden one must carry to vary the rule found in Section 21A.61. The proper forum to legitimately achieve a different result is before the rule making authorities of the City and/or the state. We are not such an authority.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

1 From these Conclusions the Board enters this

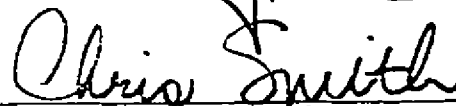
2 ORDER

3 The denial of the variance application by the City of Seattle
4 is hereby affirmed.

5 DONE this 15th day of August, 1978.


6 SHORELINES HEARINGS BOARD

7 
8 DAVE J. MOONEY, Chairman

9 
10 CHRIS SMITH, Member

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12 DAVID AKANA, Member

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14 RODNEY KERSLAKE, Member

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16 GERALD D. PROBST, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER